



FEDERAL TRADE COMMISSION

[File No. R811005]

Partial Rule Exemption for Gilbarco, Inc.

AGENCY: Federal Trade Commission.

ACTION: Grant of partial exemption from the Fuel Rating Rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) grants a partial exemption to Gilbarco, Inc. (“Gilbarco”) from requirements of the Fuel Rating Rule related to label size, shape, font size, and letterspace specifications.

DATES: This partial exemption is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission grants a partial exemption for Gilbarco to reduce the footprint and type size of fuel labels required under 16 CFR part 306.¹

I. Background

The Commission promulgated the Fuel Rating Rule (the “Rule”) (16 CFR part 306) in accordance with the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. 2821 *et seq.*, which requires the Commission to establish uniform automotive fuel rating and labeling standards.² The ratings and labels provide consumers information they need to choose the correct type or grade of fuel for their vehicles. As originally published in

¹ The petition is available online at <https://www.regulations.gov/document/FTC-2022-0041-0002>.

² See 15 U.S.C. 2823(c)(1).

1979, the Rule only required an octane rating for automotive gasoline.³ Subsequently, the Commission added labeling requirements for liquid alternative fuels, biodiesel, and ethanol flex fuel.⁴ Section 306.12 of the Rule details the label color scheme, shape, size, textual content, and font type/point size. For example, the octane label must display the fuel's octane number in 96-point font. In addition, ethanol labels must state "Use Only In Flex-Fuel Vehicles/May Harm Other Engines" in capital letters and black font, with the phrase "Flex-Fuel Vehicles" in 16-point font.

In the past, the Commission granted partial exemptions to allow Gilbarco to (1) post octane button labels with smaller label dimensions than allowed by the Rule (these changes did not alter font size), and (2) add the word "Press" on the label. In addition, the Commission allowed Gilbarco to make the font size "slightly smaller" for the prominent octane (96-point font) number on the octane label.⁵

II. Gilbarco's Requested Partial Exemption and Requests for Comments

In its new petition, Gilbarco requested a partial exemption to permit retailers to post narrower label dimensions for button labels, as well as to allow the use of smaller font size for certain text to accommodate such narrower labels. These changes would allow Gilbarco to fit more fuel labels on a single dispenser. Gilbarco explained the exemption is needed "so that retailers may adapt to the needs of consumers while continuing to ensure the clear and conspicuous disclosure of all information required by the Rule." Given increases in fuel choices at retail pumps, Gilbarco proposed new button label specifications that would allow its dispensers to accommodate one additional fuel grade button, for a total of six buttons for selecting fuel on dispensers.

³ See Octane Posting and Certification Rule, 44 FR 19160 (1979).

⁴ See 58 FR 41356 (Aug. 3, 1993) (alternative fuels); 73 FR 40154 (July 11, 2008) (biodiesel); and 81 FR 2054 (Jan. 14, 2016) (ethanol flex fuel).

⁵ See Gilbarco exemptions at 60 FR 57584 (Nov. 16, 1995); 53 FR 29277 (Aug. 3, 1988); 81 FR 86914 (Dec. 2, 2016); *see also* similar exemptions granted to other companies including Sunoco, 44 FR 33740 (June 12, 1979) and 55 FR 1871 (Jan. 19, 1990); Dresser Industries, Inc., 56 FR 26821 (June 11, 1991); Exxon Corp., 54 FR 14072 (Apr. 7, 1989).

Specifically, Gilbarco requested the following changes to the fuel rating labels:

1. Permission to post fuel rating labels that deviate from the Rule's requirements concerning the external dimensions of labels for gasoline, alternative liquid automotive fuels, ethanol flex fuels, biodiesel, biodiesel blends, and biomass-based diesel to allow for labels that are 2.20 inches wide (and the same length as previously permitted by the Commission in previous exemption requests).⁶
2. Permission for fuel retailers to post fuel rating labels that deviate from font size and letterspace specifications contained in the Rule in the following manner:
 - a. 22-point font size for "XX% ETHANOL" instead of 24-point font as currently required on the ethanol label;
 - b. 10-point font size and 10.5-point letterspace for "MINIMUM OCTANE RATING" instead of 12-point font and 12.5 point spacing as currently required on the octane label; and
 - c. 14-point font size for "FLEX-FUEL VEHICLES" instead of 16-point currently required on the ethanol label.

As part of the request, Gilbarco proposed that the overall length of the labels remain as previously approved by the Commission, and their background and text insertions otherwise comply with the Rule's color scheme, content, and font type and point size requirements.

III. Request for Comments

In a June 29, 2022, publication, the Commission proposed granting the requested exemption and sought comments on Gilbarco's proposal.⁷ In response, the Commission received three brief comments, none of which addressed the proposal's merits.⁸

⁶ The Rule (16 CFR 306.12) requires labels that are 3 inches wide by 2.5 inches long.

⁷ 87 FR 38692.

⁸ The comments are available at <https://www.regulations.gov/docket/FTC-2022-0041/comments>. The comments either did not address the proposal or addressed issues that fell outside the purview of the Rule.

IV. Discussion

The Commission concludes that Gilbarco's proposed label modifications provide clear and conspicuous notice of the required information and are consistent with the objectives of the Rule's color scheme, content, and font requirements. Additionally, the Commission's experience with similar exemptions suggests the slight reductions in font size to several label disclosures are unlikely to materially affect consumers' understanding of the labels at the pump. Accordingly, the Commission grants the requested partial exemption.

V. Paperwork Reduction Act

The Fuel Rating Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through September 30, 2023 (OMB Control No. 3084-0068). The partial exemption does not amend the Rule or change the substance or frequency of the Rule's disclosure requirements and, therefore, does not require OMB clearance.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the Commission conduct an analysis of the anticipated economic impact of the partial exemption on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The exemption does not amend the Rule or alter the substance or frequency of the Rule's disclosure requirements. Thus, the Commission has concluded that a regulatory flexibility analysis is not necessary and certifies, under Section 605 of

the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the exemption will not have a significant economic impact on a substantial number of small entities.

Authority: 16 CFR 1.31(g); 16 CFR 306.12(a).

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statement will not be included in the Code of Federal Regulations:

Concurring Statement of Commissioner Christine S. Wilson

The Commission has approved an exemption to the Fuel Rating Rule.¹ As I explained in my statement when the Commission sought comment on this proposed exemption,² the Commission promulgated this Rule pursuant to the Petroleum Marketing Practices Act (“PMPA”), which requires the Commission to establish “a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.”³ The Commission’s Rule details the label color scheme, shape, size, textual content, and font type/point size.⁴ Gilbarco, Inc., a manufacturer of fuel dispensers, requested a partial exemption to the Rule to permit retailers to post narrower label dimensions for button labels, as well as to allow the use of smaller font size for certain text to accommodate the narrower labels.

¹ 16 CFR part 306.

² Christine S. Wilson, Concurring Statement of Commissioner Christine S. Wilson, Notice of Proposed Exemption to the Fuel Rating Rule (June 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/R811005FuelRatingWilsonConcurringStatement.pdf.

³ 15 U.S.C 2823(c)(1)(B).

⁴ See 16 CFR 306.12. As explained in the partial exemption document, for example, the octane label must display the fuel’s octane number in 96-point font. In addition, ethanol labels must state “Use Only In Flex-Fuel Vehicles/May Harm Other Engines” in capital letters and black font, with the phrase “Flex-Fuel Vehicles” in 16-point font.

The partial exemption document indicates that the Commission has granted at least seven other exemptions to the Rule since 1979.⁵ I support the Commission's flexibility in granting exemptions that allow manufacturers to adapt the labels and, in several instances, to provide additional information to consumers. I also support the granting of this exemption. I continue to question, however, whether the highly prescriptive requirements in this Rule are needed to satisfy the PMPA's mandate to establish a uniform method of displaying fuel ratings. As I noted in my prior Concurring Statement, relaxation of the prescriptive requirements in the Commission's Rule potentially could obviate the need for repeated exemption petitions, which call to mind the familiar children's game of "Mother May I." Much has been said about permissionless innovation in the context of high-tech companies,⁶ but its benefits apply in this context, as well. For example, companies may have additional ideas about how to make labels more user-friendly but may choose to forgo acting on those initiatives due to the time and expense required to seek government approval, chilling beneficial innovation.

I again encourage the Commission to consider ways to streamline the Rule's prescriptive requirements, facilitating the conveyance of information to consumers uniformly while giving greater flexibility to manufacturers.⁷

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⁵ See partial exemption document above at n.5. Notably the companies seeking these exemptions have been large companies, including Exxon and Sunoco. The document states that Gilbarco is one of the largest manufacturers of fuel dispensers in the U.S.

⁶ See e.g., Adam D. Thierer, "Embracing a Culture of Permissionless Innovation" CATO Institute (Nov. 17, 2012) (explaining that "permissionless innovation refers to the notion that experimentation with new technologies and business models should generally be permitted by default" and that [p]ermissionless innovation is not an absolutist position that rejects any role for government. Rather, it is an aspirational goal that stresses the benefit of 'innovation allowed' as the default position to begin policy debates.").

⁷ I have repeatedly suggested a similar review of the Energy Labeling Rule's even more highly prescriptive requirements. See Dissenting Statement of Commissioner Christine S. Wilson, Notice of Proposed Rulemaking to Energy Labeling Rule (May 11, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf.